

In the Matter of Merchant Mariner's Document No. Z-158394
Issued to: ARNOLD MITCHEL BUTTERFIELD

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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ARNOLD MITCHEL BUTTERFIELD

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 18 June, 1951, an Examiner of the United States Coast Guard at New York City suspended Merchant Mariner's Document No. Z-158394 issued to Arnold Mitchel Butterfield upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as cabin bedroom steward on board the American SS ARGENTINA under authority of the document above described, on or about 15 December, 1949, while said vessel was at sea, he did "wrongfully molest a female passenger, one [Miss] Katherine Sheppard."

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by an attorney of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and Appellant stated under oath that he had been drinking on the day in question and had no recollection of the events upon which the specification is based. In view of this claim of ignorance, the Examiner changed Appellant's plea to "not guilty."

It was stipulated by the parties that a statement made and signed by Miss Sheppard was substantially the same as her testimony would be if she appeared as a witness. This statement was then received in evidence together with a certified copy of an entry in the official logbook and Appellant's reply thereto. After the Investigating Officer rested his case, Appellant failed to present any evidence but he made a statement as to his previous jobs and good character.

At the conclusion of the hearing, having given both parties an opportunity to submit arguments and proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification and entered the order suspending Appellant's Merchant Mariner's Document No. Z-158394 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority for a period of fifteen months; nine months' outright suspension and the balance of six months on twelve months probation.

From that order, this appeal has been taken, and it is requested that leniency be granted since Appellant has made his livelihood by going to sea since 1939 and that he has suffered great hardship during the period of a year (23 December, 1949, to 18 December, 1950) during which he stayed on the beach waiting to be called by the Coast Guard. It is also stated that Appellant had never before committed any offense and that he does not remember the incident alleged.

FINDINGS OF FACT

On 15 December, 1949, Appellant was serving as cabin bedroom steward on board the American SS ARGENTINA and acting under authority of his Merchant Mariner's Document No. 158394 while said vessel was at sea.

On this date, Appellant had been drinking since sometime in the afternoon. At about 2100, Appellant was permitted, upon request, to unlock and open a cabin door for a passenger, Miss Katherine Sheppard. In the process of doing this, one of Appellant's hands came into contact with the passenger's right hip but she did not voice any objection to this action. Appellant left the cabin, returned in five minutes with two hand towels, asked if Miss Sheppard were alone and whether she was going to bed so early. After she replied "Yes," Appellant asked her if she wanted to go to another room. Miss Sheppard said, "No, thank you," and closed the door. Appellant returned to the cabin again about five or ten minutes later and knocked on the door. Miss Sheppard did not open the door but asked Appellant what he wanted and he replied that he would come back later but he did not do so.

Appellant had been celebrating his thirty-fourth birthday, on this date, by consuming such a quantity of intoxicating beverages that he did not know what he was doing when he committed the acts in question.

According to Coast Guard records, Appellant is single and has been going to sea off and on since 1939. There has been no previous action taken against Appellant's document.

OPINION

The only evidence against Appellant, which specifically pertains to the incidents upon which the allegations in the specification are based, is a statement by the passenger, Miss Katherine Sheppard. It is possible that testimony by Miss Sheppard would have established that Appellant's offense was of a greater degree. But accepting the statement at its face value, I do not believe that Appellant "molested" the passenger to the extent of deserving the order imposed.

I have modified the Examiner's findings to agree with my somewhat less severe interpretation of the statement in evidence. It is noted that the statement indicates that Appellant made no attempt to use force upon Miss Sheppard and that she did not reproach Appellant for his initial action. Testimony by the passenger would very likely have been helpful in clarifying this latter point as well as other details with respect to Appellant's behavior.

One reason for the action to be taken is that Appellant remained ashore for approximately one year after completing the voyage during which this incident occurred.

The statement is sufficient evidence to sustain the specification and charge but it is considered that my findings are not adequate to justify the order imposed by the Examiner. Therefore, the order of the Examiner dated 18 June, 1951, is modified to read as follows:

ORDER

"Merchant Mariner's Document No. Z-158394 and all other documents, licenses and certificates issued to Arnold Mitchel Butterfield by the U.S. Coast Guard or its predecessor authority are hereby suspended for a period of six (6) months. The first three (3) months shall be outright. The balance of three (3) months shall not be effective provided no charge under R.S. 4450, as amended (46 U.S.C. 239), is proved against Arnold Mitchell Butterfield for acts committed within nine (9) months of 18 September, 1951.

"If this probation is violated, the order for which probation was granted shall become effective with respect to all certificates and licenses here involved, and also any certificate or license acquired by you during the period of probation, at such time as designated by any Coast Guard Hearing Officer, finding the violation and may be added to, or form a part of any additional order which is entered by such Hearing Officer."

MERLIN O'NEILL
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 17th day of September, 1951